

CODE OF PROCEDURE

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9000. CODE OF PROCEDURE

9100. APPLICATION AND PURPOSE

9110. Application

(a) Proceedings

The Rule 9000 Series is the Code of Procedure and it includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities of a member experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Nasdaq By-Laws and the Nasdaq Rules. The Rule 9100 Series is of general applicability to all proceedings set forth in Rule 9000 Series, unless a Rule specifically provides otherwise.

(b) Rights, Duties, and Obligations of Members and Associated Persons

Unless otherwise specified, a person associated with a member shall have the same rights as a member and shall be subject to the same duties and obligations under the Code of Procedure.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to offices or departments refer to offices so designated by Nasdaq.

9111. Contracting Responsibilities

Nasdaq has contracted with NASD Regulation to perform some of the functions described in the Rule 9000 Series. Members and associated persons shall be notified when NASD Regulation procedures shall be applicable to proceedings initiated under the Rule 9000 Series and what the applicable procedures shall be. In addition, Nasdaq rules that refer to Nasdaq staff should be understood as referring to NASD Regulation staff as well. Notwithstanding the fact that Nasdaq has contracted with NASD Regulation to perform some of Nasdaq's function, Nasdaq shall retain ultimate legal responsibility for and control of such functions.

9120. Definitions

(a) "Adjudicator"

The term "Adjudicator" means:

(1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision;

(2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or

(3) a natural person who serves on a body, board, committee, or group described in (1) or (2).

(b) "Code"

The term "Code" refers to the Code of Procedure.

(c) "Counsel to the Nasdaq Review Council "

The term "Counsel to the Nasdaq Review Council" means an attorney of the Office of the General Counsel of Nasdaq who is responsible for advising the Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Nasdaq Review Council.

(d) "Director"

The term "Director" means a member of the Board of Directors of Nasdaq.

(e) "General Counsel"

The term "General Counsel" means the General Counsel of Nasdaq, or his or her delegatee, who shall be a person who reports to the General Counsel of Nasdaq and is an Associate General Counsel, an Assistant General Counsel, or a person who has substantially the same or equivalent duties and responsibilities as an Associate General Counsel or an Assistant General Counsel.

(f) "Hearing Panel"

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9500 Series to conduct a proceeding.

(g) "Market Regulation Committee"

The term "Market Regulation Committee" means the committee of Nasdaq designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Nasdaq Rules and policies relating to:

- (1) the quotations of securities;
- (2) the execution of transactions;
- (3) the reporting of transactions; and

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules (Rule 4000 Series), other Nasdaq and NASD Market Rules (Rule 5000 Series), Nasdaq Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

(h) "Party"

With respect to a particular proceeding, the term "Party" means:

(1) in the Rule 9200 Series and the Rule 9300 Series, the department or office designated to issue a complaint, or a member or person that is the subject of a complaint issued;

(2) in the Rule 9410 Series and the Rule 9520 Series, the Membership Department or

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that is the subject of a notice or files an application under Rule 9522;

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513; or

(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

(i) "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an Nasdaq member or associated person against whom a complaint is issued.

(j) "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the Nasdaq

Review Council pursuant to Article V of the Nasdaq By-Laws.

(k) "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of the Nasdaq Review Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of Nasdaq to the Nasdaq Review Council pursuant to the Rule 9520 Series.

(l) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the Nasdaq Review Council's consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under the Rule 9410 Series or Rule 9630 to conduct a review proceeding.

Selected NSASD Notices To Members: 99-01.

9130. Service; Filing of Papers

9131. Service and Filing of Papers

(a) Service on Each Party

A complaint or document initiating a proceeding under the Rule 9000 Series shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator on each Party or his or her counsel or representative.

(b) How Served

A document that is required to be served shall be served by personal service, by mail by U.S. Postal Service, or by commercial courier.

(c) Filing Requirement

All papers required to be filed pursuant to the Rule 9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

(d) Certificate of Service

Papers filed with an Adjudicator shall be accompanied by a certificate of service

stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

9132. Computation of Time

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less, not including any additional time for service by mail. If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

9140. Appearance

In any proceeding, a person may appear on his or her own behalf or be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.. When a person first makes any filing or otherwise appears on his or her own behalf or through his or her attorney before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

9141. Ex Parte Communications

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Nasdaq Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to a Nasdaq employee who is participating or advising in the decision of an Adjudicator with respect to that proceeding; and

(2) No Adjudicator who is participating in a decision with respect to a proceeding, or no Nasdaq employee who is participating or advising in the decision of an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Nasdaq Staff an ex parte communication relevant to the merits of that proceeding.

9142. Rules of Evidence

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series. In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of Nasdaq as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

9150. Reserved**9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) Nasdaq Board

The Chair of the Nasdaq Board shall have authority to order the disqualification of a Director, and a majority of the Nasdaq Board excluding the Chair of the Nasdaq Board, shall have authority to order the disqualification of the Chair;

(b) Nasdaq Review Council or Certain Subcommittees

The Chair of the Nasdaq Review Council shall have authority to order the disqualification of a member of the Nasdaq Review Council, a member of a Subcommittee appointed pursuant to the Rule 9410 Series or the Rule 9600 Series, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and the Vice Chair of the Nasdaq Review Council shall have authority to order the disqualification of the Chair of the Nasdaq Review Council;

(c) Rule 9331 Subcommittee

Disqualification of a Panelist of a Subcommittee appointed under the Rule 9300 Series shall be governed by Rule 9332;

(d) Rule 9514 Hearing Panel

The Nasdaq Board shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b);

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

9211. Complaint

- (a) A disciplinary proceeding shall begin when the complaint is served and filed.
- (b) Each complaint shall be in writing and shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served on each Party

9215. Answer to Complaint

- (a) Each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent
- (b) An answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.
- (c) If a Respondent does not file an answer or make any other filing or request related to the complaint, the Respondent shall be sent a second notice of Complaint requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow Nasdaq to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer within the time required, the Hearing Officer may issue a default decision against the Respondent.

Selected NASD Notices To Members: 99-01.

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

- (1) If Nasdaq staff has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Nasdaq staff may prepare and request that the member or associated person execute a letter

accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2) (A) If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudice of the General Counsel, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right of such member or person associated with a member to claim that a person violated the *ex parte* prohibitions of Rule 9143, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(B) If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the Nasdaq Review Council. The General Counsel may accept such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the General Counsel, it shall be deemed final and shall

constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, Nasdaq may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)

(1) Nasdaq or the Nasdaq Review Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If Nasdaq staff has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Nasdaq staff may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2) (A) If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(ii) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such

minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under subparagraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the Nasdaq Review Council. The Review Subcommittee or the General Counsel may accept such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. The Review Subcommittee may reject such letter or refer it to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the General Counsel, it shall be deemed final and Nasdaq shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, Nasdaq may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

Rule 2210(b) and (c) and Rule 2220(b) and (c) -- Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with Nasdaq within the required time limits.

Rule 3360 -- Failure to timely file reports of short positions on Form NS-1.

Rule 3110 -- Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with Nasdaq Rules.

Rule 8211, Rule 8212, and Rule 8213--Failure to submit trading data as requested.

9220. Request for Hearing

(a) Respondent Request for Hearing

With the filing of any Respondent's answer, such Respondent may request a hearing. If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

(b) Hearing Panel Order Requiring Hearing

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

(c) Notice of Hearing

The Hearing Panel shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless good cause exists to shorten that period or the Parties waive this requirement.

9230. Hearing Panel

(a) Appointment

As soon as practicable after the issuance of a complaint, Nasdaq shall appoint a Hearing Panel to conduct the disciplinary proceeding and issue a decision.

(b) Composition of Hearing Panel

The Hearing Panel shall be composed of a three Panelists. Each Panelist shall be associated with a member of Nasdaq or retired therefrom, and shall be a current or former member of the Nasdaq Review Council, a current or former member of the Market Regulation Committee, or a former Director of Nasdaq.

9240. Reserved

9250. Discovery**9251. Inspection and Copying of Documents in Possession of Staff****(a) Documents to be Available for Inspection and Copying**

(1) Nasdaq Staff shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Nasdaq Staff in connection with the investigation that led to the institution of proceedings.

(2) If Nasdaq Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Nasdaq Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Nasdaq Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Nasdaq Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Nasdaq Staff shall make the additional Documents available immediately to the Respondent.

(b) Documents That May Be Withheld

(1) Nasdaq Staff may withhold a Document if:

(A) the Document is privileged or constitutes attorney work product;

(B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Nasdaq employee that shall not be offered in evidence;

(C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of Nasdaq, a federal, state, or foreign regulatory authority, or a self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, Nasdaq, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) the Hearing Panel grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

9252. Requests for Information

A Respondent who requests that Nasdaq invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to Nasdaq's jurisdiction.

9260. Hearing and Decision

9261. Evidence and Procedure in Hearing

(a) Submission of Documentary Evidence and List of Witnesses Before Hearing

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Panel, each Party shall submit to all other Parties and to the Hearing Panel copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

(b) Party's Right to Be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative.

9262. Testimony

A person who is subject to Nasdaq's jurisdiction shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

9263. Evidence: Admissibility

(a) Criteria for Receiving and Excluding Evidence

The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

(b) Objections

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

9264. Motion for Summary Disposition**(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Parties , may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Panel .

(b) After Commencement of Hearing on Merits

After a hearing on the merits has commenced, a Respondent may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent only with leave of the Hearing Panel.

(c) Form of Papers

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

(d) Rulings on Motion

The Hearing Panel shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing,

facts essential to justify the Party's opposition to the motion, the Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

9265. Record of Hearing

A hearing shall be recorded by a court reporter and a transcript shall be prepared and shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

9266. Reserved

9267. Reserved

9268. Decision of Hearing Panel

(a) Written Decision

The Hearing Panel shall prepare a written decision that reflects the views of the Hearing Panel. The decision shall include: (1) a statement describing the investigative or other origin of the disciplinary proceeding; (2) the specific statutory or rule provisions that were alleged to have been violated; (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted; 4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint; (5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding; and (6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective

(b) Service, Notice, And Dissemination Requirements

The Hearing Panel shall promptly serve the decision of the Hearing Panel and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each Nasdaq member with which a Respondent is associated.

(c) Appeal or Review

If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1).

9269. Default Decisions**(a) Issuance of Default Decisions**

(1) The Hearing Panel may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at any hearing that a Party is required to attend under the Rule 9200 Series of which the Party has due notice.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is the Nasdaq Staff, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) The Hearing Panel may order a Party that fails to appear at a hearing to pay the costs incurred by other Parties in connection with their appearance.

(b) Contents of Decision

The contents of a default decision shall conform to the requirements of Rule 9268(a).

(c) Review of Default Decision

Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, either the Review Subcommittee or the Nasdaq Review Council may enter such an order.

(d) Final Disciplinary Action of Nasdaq; Effectiveness of Sanctions

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the final disciplinary action of Nasdaq, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of Nasdaq. Nasdaq shall serve the decision on a Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

Selected NASD Notices to Members; 99-16.

9270. Settlement Procedure**(a) When Offer Allowed; No Stay of Proceeding**

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement before the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel.

(b) Settlement Offer Shall Conform to Rule

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

- (1) a statement describing the investigative or other origin of the disciplinary action;
- (2) the specific statutory or rule provisions that the member or associated person is alleged to have violated;
- (3) a statement containing the acts or practices which the member or associated person is alleged to have engaged in or omitted;
- (4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3); and,
- (5) a proposed sanction to be imposed that is consistent with Nasdaq's then current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction.

(d) Waiver

- (1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudgment of the Hearing Panel, the General Counsel, the Nasdaq Review Council, or any member of the Nasdaq Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

(e) Final Disciplinary Action of Nasdaq

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of Nasdaq. The sanction shall take effect as set forth in the order.

9300. REVIEW OF DISCIPLINARY PROCEEDING BY NASDAQ REVIEW COUNCIL AND NASDAQ BOARD; APPLICATION FOR COMMISSION REVIEW

9310. Appeal to or Review by Nasdaq Review Council

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

A Party may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269.

(b) Effect

An appeal to the Nasdaq Review Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the Nasdaq Review Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351.

(c) Notice of Appeal Content and Signature Requirements

A Party appealing pursuant to this Rule shall file a written notice of appeal with the General Counsel and serve the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

- (1) the name of the disciplinary proceeding;
- (2) the disciplinary proceeding docket number;
- (3) the name of the Party on whose behalf the appeal is made;
- (4) a statement on whether oral argument before the Nasdaq Review Council is requested; and
- (5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

(d) Notice of Cross-Appeal

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-appeal shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in subparagraphs (c)(1), (c)(2), (c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is made.

(e) Waiver of Issues Not Raised

The Nasdaq Review Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Nasdaq Review Council if such issue was not previously set forth in the notice of appeal.

(f) Withdrawal of Notice of Appeal or Cross-Appeal

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him

or her at any time by filing a written notice of withdrawal of appeal or cross-appeal with the Office of General Counsel and serving notice thereof on the Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the name of the disciplinary proceeding; the disciplinary proceeding docket number; and the name of the Party on whose behalf the notice of appeal or cross-appeal was filed previously. The notice of withdrawal of appeal or cross-appeal shall be signed by the Party, or his or her counsel or representative. Upon the withdrawal of a notice of appeal, any outstanding cross-appeal shall be treated as an appeal unless it is withdrawn.

9312. Review Proceeding Initiated By Nasdaq Review Council

(a) Call for Review

(1) Rule 9268 Decision

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the Nasdaq Review Council or, pursuant to authority delegated from the Nasdaq Review Council, by any member of the Review Subcommittee. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Nasdaq Review Council.

(2) Rule 9269 Decision

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the General Counsel, on his or her own motion within 25 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Nasdaq Review Council.

(b) Effect

Institution of review by a member of the Nasdaq Review Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the General Counsel, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the Nasdaq Review Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351.

(c) Requirements

(1) If a member of the Nasdaq Review Council, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding. Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

(C) a brief statement of the findings, conclusions, or sanctions with respect to which the Nasdaq Review Council, the Review Subcommittee, or the General Counsel determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the Nasdaq Review Council's authority under Rule 9346 to review any issues raised in the record. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Nasdaq Review Council if such issue was not previously set forth in the notice of review.

(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal

If the review of a disciplinary proceeding by the Nasdaq Review Council is terminated before the Nasdaq Review Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) a member of the Nasdaq Review Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day Nasdaq receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

(2) the General Counsel shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 45 day period during which a call for review may be made shall begin on the day Nasdaq receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

9313. Counsel to Nasdaq Review Council

(a) Authority

A Counsel to the Nasdaq Review Council shall be appointed by the General Counsel for each disciplinary case on appeal or review. A Counsel to the Nasdaq Review Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

- (1) direct the completion and transmission of a record of a disciplinary proceeding to the Nasdaq Review Council;
- (2) establish or amend a briefing schedule under Rule 9347(b) but not shorten a briefing schedule except with the consent of the Parties;
- (3) permit a brief or any other document required to be filed to vary from the requirements of the Rule 9130 Series as provided in Rule 9347(a);
- (4) establish the date, time, and location of an oral argument and provide for notice of the hearing under Rule 9341;
- (5) for other than a Party and counsel or a person acting in a representative capacity, determine who may attend a hearing;
- (6) rule on a motion by a Party to request to lengthen or shorten a period of time prescribed by the Code for the filing of any papers, or request that a hearing be postponed or adjourned under Rule 9322, except that a period may not be shortened and a hearing may not be postponed or adjourned without the consent of the Parties; and
- (7) create and maintain the official record of the disciplinary proceeding on appeal or review.

(b) Review

A Party seeking the review of a decision of a Counsel to the Nasdaq Review Council may make a motion to the Nasdaq Review Council, the Review Subcommittee, a Subcommittee.

9320. Transmission of Record; Extensions of Time, Postponements, Adjournments

9321. Transmission of Record

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the Nasdaq Review Council may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Nasdaq Review Council, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the Nasdaq Review Council is complete.

9322. Extensions of Time, Postponements, Adjournments**(a) Availability**

At any time prior to the issuance of a decision pursuant to Rule 9349, the Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or Counsel to the Nasdaq Review Council, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the Nasdaq Review Council may shorten a period so prescribed only with the consent of the Parties. The Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or Counsel to the Nasdaq Review Council, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the Nasdaq Review Council may postpone or adjourn a hearing only with the consent of the Parties.

(b) Limitations on Postponements, Adjournments, and Changes in Location

Oral argument shall begin at the time and place ordered, unless the Nasdaq Review Council, the Review Subcommittee, a Subcommittee or, if applicable, or Counsel to the Nasdaq Review Council, for good cause shown, postpones, adjourns, or changes the location of the oral argument, except that Counsel to the Nasdaq Review Council may postpone or adjourn the oral argument only with the consent of the Parties. In considering a motion for the postponement or adjournment of an oral argument, the Nasdaq Review Council, the Review Subcommittee, a Subcommittee, or Counsel to the Nasdaq Review Council shall consider, in addition to any other relevant factors:

- (1) the length of time the disciplinary proceeding has been pending to date, and the timeliness of the request for a postponement, an adjournment, or an extension;
- (2) the number of postponements, adjournments, or extensions already granted;
- (3) the stage of the proceedings at the time of the request;
- (4) the prejudice to the other Parties;
- (5) the potential harm to the investing public if an extension of time, an adjournment, or a postponement is granted; and
- (6) any other matter that justice may require.

9330. Appointment of Subcommittee; Disqualification and Recusal**9331. Appointment of Subcommittee****(a) Appointment by Nasdaq Review Council**

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former members of the Nasdaq Review Council or former Directors.

(b) Function

If a hearing is held, the Subcommittee shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee, shall make a recommendation to the Nasdaq Review Council regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

9332. Disqualification and Recusal

(a) Recusal, Withdrawal of Member or Panelist

If at any time a member of the Nasdaq Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or a Counsel to the Nasdaq Review Council determines that the member, the Panelist, or the Counsel to the Nasdaq Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Nasdaq Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to Nasdaq Review Council shall notify the Chair or the Vice Chair of the Nasdaq Review Council, and the Chair or the Vice Chair of the Nasdaq Review Council shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the Nasdaq Review Council has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair or Vice Chair of the Nasdaq Review Council shall appoint a replacement Panelist. In the event that a member of the Review Subcommittee withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chair or Vice Chair of the Nasdaq Review Council shall appoint another member of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the Nasdaq Review Council withdraws, is incapacitated, or is otherwise

unable to continue service after assignment, the General Counsel shall assign a replacement Counsel to the Nasdaq Review Council.

(b) Motion for Disqualification

A Party may move for the disqualification of a member of the Nasdaq Review Council, the Review Subcommittee, a Panelist of a Subcommittee or a Counsel to the Nasdaq Review Council. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Nasdaq Review Council might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

(1) when the Party learned of the facts believed to constitute the disqualification; or

(2) when the Party was notified of the composition of the Subcommittee or the assignment to the disciplinary proceeding of the Counsel to the Nasdaq Review Council.

(c) Disposition of Disqualification Motions: Challenges to Single Member of Nasdaq Review Council or Review Subcommittee, Single Panelist of Subcommittee or Extended Hearing Committee, or Counsel to the Nasdaq Review Council

Motions for disqualification of a member of the Nasdaq Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee, or a Counsel to the Nasdaq Review Council shall be decided by the Chair or Vice Chair of the Nasdaq Review Council, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. If a member of the Review Subcommittee is disqualified, the Chair or Vice Chair of the Nasdaq Review Council shall appoint another member of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair or the Vice Chair of the Nasdaq Review Council shall appoint a replacement Panelist. If a Counsel is disqualified, the General Counsel shall assign a replacement Counsel to the Nasdaq Review Council.

(d) Disposition of Disqualification Motions: Challenges to Multiple Members or Panelists

(1) Nasdaq Review Council

If a Party files a motion to disqualify more than one member of the Nasdaq Review Council, the Chair or the Vice Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the Nasdaq Review Council shall consider the review or appeal of the disciplinary matter.

(2) Review Subcommittee

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair or the Vice Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair or Vice Chair of the Nasdaq Review Council shall appoint other members of the Nasdaq Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the members being replaced.

(3) Subcommittee

If a Party files a motion to disqualify more than one Panelist of a Subcommittee, the Chair or the Vice Chair of the Nasdaq Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair or the Vice Chair of the Nasdaq Review Council shall appoint replacement Panelists.

9340. Proceedings

9341. Oral Argument

(a) Request for Oral Argument

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the Nasdaq Review Council's notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

(b) Discretion to Proceed With or Without Oral Argument

In the absence of a request for oral argument, the Subcommittee, in its discretion, may order that a matter be set down for oral argument or may consider the matter on the

basis of the record.

(c) Notice Regarding Oral Argument

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee, or Counsel to the Nasdaq Review Council may provide for a shorter notice period, except that Counsel to the Nasdaq Review Council may provide for a shorter notice period only with the consent of the Parties.

(d) Attendance Required

The Parties shall make oral arguments before the Subcommittee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee, shall be present for the oral argument.

(e) Time Limits

Unless the Subcommittee, orders otherwise for good cause shown, each Party's oral argument before the Subcommittee, shall be limited to a total of 30 minutes.

(f) Recordation; Transcript Correction

(1) Oral arguments shall be recorded by a court reporter and a transcript shall be prepared.

(2) A transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase a transcript of his or her own testimony from the court reporter.

(3) Prior to the filing of post-hearing briefs or within such earlier time as reasonably ordered by the Subcommittee, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted by affidavit to the Subcommittee. Upon notice to all Parties to the disciplinary proceeding, the Subcommittee may order the correction to the transcript as requested or sua sponte.

9342. Failure to Appear at Oral Argument

A Party who requests oral argument but fails to appear after being duly notified shall be deemed to have waived any opportunity for oral argument provided under the Rule 9300 Series. The Subcommittee, shall permit argument to go forward as to those Parties who appear. The Subcommittee, in the exercise of its discretion, may consider the matter on the basis of the record without oral argument as to those Parties who failed to appear.

9343. Disposition Without Oral Argument

If an oral argument is not held, the matter shall be considered by a Subcommittee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee, or the Nasdaq Review Council in connection with the appeal, cross-appeal, or call for review.

9344. Failure to Participate Below; Abandonment of Appeal**(a) Failure to Participate Below**

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the Nasdaq Review Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding below, a Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee, and the Nasdaq Review Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

(b) Abandonment of Appeal

If an appealing Party fails to advise the Nasdaq Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Nasdaq Review Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel, shall become the final disciplinary action of Nasdaq. If a cross-appealing Party fails to advise the Nasdaq Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Nasdaq Review Council or the Review Subcommittee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the Nasdaq Review Council may withdraw any dismissal entered pursuant to this Rule.

9345. Subcommittee Recommended Decision to Nasdaq Review Council

A Subcommittee shall present a recommended decision in writing to the Nasdaq Review Council before the meeting of the Nasdaq Review Council at which the disciplinary proceeding shall be considered.

9346. Evidence in Nasdaq Review Council Proceedings**(a) Scope of Review**

Except as otherwise set forth in this paragraph, the Nasdaq Review Council's review shall be limited to consideration of:

- (1) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee and the Nasdaq Review Council; and
- (2) any oral argument permitted under this Code.

A Party may introduce additional evidence only with prior approval of the Subcommittee, or the Nasdaq Review Council, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the Nasdaq Review Council may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

(b) Leave to Introduce Additional Evidence

A Party may apply to the Subcommittee, or the Nasdaq Review Council for leave to introduce additional evidence by motion filed not later than 30 days after the record below is transmitted to the Nasdaq Review Council and the index to the record is served upon all Parties, pursuant to Rule 9321. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

(d) Discretion Regarding Review of Additional Evidence

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee, or the Nasdaq Review Council may permit the

evidence to be introduced into the record on review, or the Nasdaq Review Council may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

(e) Requirements for Submitting Additional Documentary Evidence

A Party that is permitted to introduce additional documentary evidence before the Subcommittee, or the Nasdaq Review Council pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee, or the Nasdaq Review Council, and to all Parties at such time as the Subcommittee, the Nasdaq Review Council, or Counsel to the Nasdaq Review Council may specify.

(f) Subcommittee Order Requiring Additional Evidence

On its own motion, the Subcommittee, or the Nasdaq Review Council may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or the Nasdaq Review Council may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee, or the Nasdaq Review Council.

(g) Rules of Evidence Not Applicable

The formal rules of evidence shall not apply.

(h) Testimony

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

Selected NASD Notices to Members; 99-16.

9347. Filing of Papers in Nasdaq Review Council Proceedings

(a) Briefs; Reply Briefs; Requirements

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief shall be limited to matters in reply. All briefs shall conform to the requirements of

the Rule 9130 Series, and, except with advance leave of the Subcommittee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee, the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council in a scheduling order. Unless the Subcommittee or the Nasdaq Review Council, the Review Subcommittee, or Counsel to the Nasdaq Review Council specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the Nasdaq Review Council may not shorten a period previously established for the filing of briefs except with the consent of the Parties.

9348. Powers of the Nasdaq Review Council on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the Nasdaq Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction.

9349. Nasdaq Review Council Formal Consideration; Decision

(a) Decision of Nasdaq Review Council, Including Remand

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the Nasdaq Review Council, after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee or, if applicable, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the Nasdaq Review Council may remand the disciplinary proceeding with instructions. The Nasdaq Review Council shall prepare a proposed written decision pursuant to paragraph (b).

(b) Contents of Decision

The decision shall include:

- (1) a statement describing the investigative or other origin of the

disciplinary proceeding;

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions as to whether the Respondent violated any provision alleged in the complaint;

(5) a statement in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction imposed, the reasons therefor, and, pursuant to Rule 9360, the date upon which such sanction shall become effective.

(c) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the Nasdaq Board does not call the disciplinary proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the Parties and provide a copy to each Nasdaq member with which a Respondent is associated. The decision shall constitute the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless the Nasdaq Review Council remands the proceeding.

9350. Discretionary Review by Nasdaq Board

(a) Call for Review by Director

A Director may call a disciplinary proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

(1) A Governor shall make his or her call for review not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council.

(2) Waive

By a unanimous vote, the Nasdaq Board may shorten the period in subparagraph (1) to less than 15 days. By an affirmative vote of the majority of

the Nasdaq Board then in office, the Nasdaq Board may, during the 15 day period in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.

(c) Review at Next Meeting

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the disciplinary proceeding not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

(d) Decision of Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. The Nasdaq Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the Nasdaq Board may remand the disciplinary proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

(e) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Board shall issue and serve its written decision on the Parties and provide a copy to each Nasdaq member with which a Respondent is associated. The decision shall constitute the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless the Nasdaq Board remands the proceeding.

9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) shall become effective 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1), unless otherwise specified therein. Nasdaq shall serve the decision on a Respondent by overnight courier, facsimile or other means reasonable likely to obtain prompt service when the sanction is a bar or an expulsion.

Selected Notices to Members; 99-16.

9370. Application to Commission for Review**(a) Appeal to Commission; Effect**

A Respondent aggrieved by final disciplinary action pursuant to the Rule 9200 Series or the Rule 9300 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1).

(b) Nasdaq Notification to Member

Nasdaq shall promptly notify any Nasdaq member with which a Respondent is associated if the Respondent files an application for review to the Commission.

9400. LIMITATION PROCEDURES UNDER RULES 3130 AND 3131**9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties****9411. Purpose**

The Rule 9410 Series sets forth procedures for regulating the activities of a member that is experiencing the financial or operational difficulties specified in Rule 3130 or 3131.

9412. Notice of Limitations

The Membership Department may issue a notice directing a member to limit its business activities if the Membership Department has reason to believe that any condition specified in Rule 3130 or 3131 exists. The notice shall specify the grounds on which such action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice, and the conditions for terminating such limitations. The effective date of the limitations shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Membership Department under Rule 9413. The Membership Department shall serve the notice by facsimile or overnight commercial courier.

9413. Membership Department Consideration**(a) Request for Hearing**

A member aggrieved by a notice issued under Rule 9412 may file a written

request for a hearing before the Membership Department. The request shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412.

(b) Stay

A request for hearing shall stay the notice of limitations served under Rule 9412 unless the Nasdaq Review Council orders otherwise.

(c) Time of Hearing

If a member requests a hearing under paragraph (a), the Membership Department shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing, the Membership Department shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight commercial courier.

(d) Transmission of Documents

(1) Not less than five business days before the hearing, the Membership Department shall provide to the member by facsimile or overnight commercial courier all documents that were considered in imposing the limitations on business activities set forth in the notice served under Rule 9412, unless a document meets the criteria of Rule 9251(b)(1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by Nasdaq until the date upon which Nasdaq serves a final decision or, if applicable, upon conclusion of any review by the Commission or the federal courts.

(2) Not less than five business days before the hearing, the Membership Department and the member shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight commercial courier.

(e) Hearing and Rights of Member

The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Membership Department within a reasonable time determined by the Membership Department. Upon notice to the participants in the hearing, the Membership Department may order corrections to the transcript as requested or sua sponte.

(f) Record

The record shall consist of:

- (1) the notice issued pursuant to Rule 9412;
- (2) all documents transmitted to the member under Rule 9413(d);
- (3) the request for hearing filed pursuant to Rule 9413(a);
- (4) any other submissions by the member and the Membership Department at the hearing;
- (5) any evidence considered at the hearing; and
- (6) the transcript of the hearing and any corrections thereto.

(g) Custodian of the Record

The custodian of the record shall be the Membership Department.

(h) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(i) Decision

Within seven days after the hearing, the Membership Department shall issue a written decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall state the grounds for the limitations, the conditions for terminating such limitations, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the limitations. The Membership Department shall promptly serve the decision by facsimile or overnight commercial courier. The limitations imposed shall become effective upon service of the decision.

(j) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the Nasdaq Review Council calls the notice for review under Rule 9414(a)(2), the limitations specified in the notice shall remain in effect until the Membership Department reduces or removes the limitations pursuant to Rule 9417(b).

9414. Nasdaq Review Council**(a) Initiation of a Review****(1) Application by Member**

A member aggrieved by a decision issued under Rule 9413 may file a written application for review by the Nasdaq Review Council. The application shall state the specific grounds for the review and whether oral argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision. The member may withdraw its application for review at any time by filing a written notice with the Nasdaq Review Council pursuant to Rules 9135, 9136, and 9137.

(2) Motion of Nasdaq Review Council

A decision issued under Rule 9413 shall be subject to a call for review by any member of the Nasdaq Review Council or the Review Subcommittee within 30 days after service of the decision. If a member that receives a notice under Rule 9412 does not request a hearing under Rule 9413, the notice shall be subject to a call for review by any member of the Nasdaq Review Council or the Review Subcommittee within 30 days after the effective date of the notice. If the Nasdaq Review Council or the Review Subcommittee calls a decision or notice for review, a written notice of review shall be served promptly on the member pursuant to Rule 9131. The notice of review shall state the specific grounds for the review and whether an oral argument is ordered. If a decision is called for review by a member of the Nasdaq Review Council or the Review Subcommittee, the Nasdaq Review Council shall review the decision.

(3) Stay

Unless otherwise ordered by the Nasdaq Review Council, the initiation of a review under this paragraph shall stay the decision of the Membership Department or an uncontested notice until a decision constituting final action of Nasdaq is issued.

(4) Transmission of the Record

If a review is initiated under this paragraph, the Membership Department shall assemble and prepare an index of the record, transmit the record and index to the Nasdaq Review Council, certify to the Nasdaq Review Council that the record is complete, and serve a copy of the record and index on the member.

(5) Ex Parte Communications

The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when Nasdaq staff has knowledge that a member intends to file a written application for review or that the Nasdaq Review Council intends to review a decision on its own motion under this Rule.

(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the Nasdaq Review Council, and the remaining member or members shall be current or former members of the Nasdaq Review Council or a former Director.

(2) Oral Argument

If oral argument is timely requested by the member, oral argument shall be held before the Subcommittee within 14 days after service of the decision under Rule 9413. If oral argument is ordered by the Subcommittee, oral argument shall be held before the Subcommittee within 14 days after service of the order under paragraph (a)(2). The member shall be entitled to be represented by an attorney. The oral argument shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Subcommittee within a reasonable time determined by the Subcommittee. Upon notice to the participants in the hearing, the Subcommittee may order corrections to the transcript as requested or sua sponte.

(3) Review on Record

The Subcommittee shall conduct its review on the basis of the record, any written submissions by the member and the Membership Department, and the decision issued pursuant to Rule 9413(i). If oral argument is requested or ordered, the Subcommittee also may consider any submissions or additional arguments by the member and the Membership Department.

(4) Additional Evidence

The Subcommittee may consider any additional relevant and material evidence if the member shows good cause for not previously submitting such evidence. If additional evidence is accepted by the Subcommittee, the evidence

shall be included in the record. Proffered evidence that is not accepted into the record by the Subcommittee shall be retained until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(5) Recommendation

The Subcommittee shall present a recommended decision in writing to the Nasdaq Review Council not later than seven days before the meeting of the Nasdaq Review Council at which the proceeding shall be considered.

(c) Decision

(1) Decision of Nasdaq Review Council, Including Remand

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the Nasdaq Review Council may affirm, modify, or reverse the Membership Department's decision or remand the proceeding with instructions. The Nasdaq Review Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

- (A) a description of the Membership Department's decision, including its rationale;
- (B) a description of the principal issues regarding the imposition of limitations raised in the review and a statement supporting the disposition of such issues;
- (C) a summary of the evidence on each issue;
- (D) a statement of whether the Membership Department's decision is affirmed, modified, or reversed, and a rationale therefor; and
- (E) if any limitations are imposed:
 - (i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9416 if the member fails to comply with any of the limitations; and
 - (ii) the conditions for terminating the limitations.

(3) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the proceeding for review pursuant to Rule 9415. If the Nasdaq Board does not call the proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the member and the Membership Department pursuant to Rule 9131. The decision shall be effective upon service. The decision shall constitute the final action of Nasdaq, unless the Nasdaq Review Council remands the proceeding.

9415. Discretionary Review by the Nasdaq Board

(a) Call for Review by Director

A Director may call a proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council. By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review at Next Meeting

If a Director calls a proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the proceeding not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. Alternatively, the Nasdaq Board may remand the proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9414(c)(2).

(e) Issuance of Decision

The Nasdaq Board shall issue and serve its written decision on the member and the Membership Department pursuant to Rule 9131. The decision shall be effective upon

service. The decision shall constitute the final action of Nasdaq, unless the Nasdaq Board remands the proceeding.

9416. Enforcement of Sanctions

(a) Order

If the Membership Department determines that a member has failed to comply with any limitations imposed by a decision or an effective notice under the Rule 9410 Series that has not been stayed, the Membership Department shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The Membership Department shall serve the order on the member by facsimile or overnight commercial courier.

(b) Hearing

(1) A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before the Membership Department. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days (including intermediate Saturdays, Sundays, and Federal holidays) after service of the order. The hearing shall be held within ten days after service of the order under paragraph (a).

(2) The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(3) The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Membership Department within a reasonable time determined by the Membership Department. Upon notice to the participants in the hearing, the Membership Department may order corrections to the transcript as requested or sua sponte.

(c) No Stay of Sanctions

Unless otherwise ordered by the Nasdaq Review Council, a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).

(d) Decision

Within four days after the hearing, the Membership Department shall affirm, modify, or reverse the order issued under paragraph (a). The Membership Department shall serve the decision on the member pursuant to Rule 9131. The decision shall

become effective upon service and shall constitute final action of Nasdaq.

9417. Additional Limitations; Reduction or Removal of Limitations

(a) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Membership Department may impose additional limitations by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional limitations by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through 9416 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional limitations.

(b) Reduction or Removal of Limitations

If the Membership Department determines that any limitations previously imposed under the Rule 9410 Series should be reduced or removed, the Membership Department shall serve a written notice on the member pursuant to Rule 9131.

9418. Application to Commission for Review

The right to have any action taken by Nasdaq pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of the action taken by Nasdaq, unless the Commission otherwise orders.

9419. Other Action Not Foreclosed

Action by Nasdaq under the Rule 9410 Series shall not foreclose action by Nasdaq under any other Rule.

9500. OTHER PROCEEDINGS

9510. Summary and Non-Summary Proceedings

9511. Purpose and Computation of Time

(a) Purpose

The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the Nasdaq By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to

services offered by Nasdaq or a member thereof, if Nasdaq determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or Nasdaq; or (C) an advertising pre-use filing requirement.

(b) Computation of Time

For purposes of the Rule 9510 Series, time shall be computed as set forth in Rule 9138, except that intermediate Saturdays, Sundays, and holidays shall be included in the computation.

Selected NASD Notices to Members; 99-16.

9512. Initiation of Summary Proceeding

(a) Authorization

(1) The Nasdaq Board may authorize the President of Nasdaq to issue on a case-by-case basis a written notice that:

(A) summarily suspends a member or associated person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization; or

(B) summarily suspends a member who is in such financial or operating difficulty that Nasdaq determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or Nasdaq .

(2) The Nasdaq Board may authorize the President of Nasdaq to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by Nasdaq if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the Nasdaq Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or Nasdaq.

(b) Contents and Service of Notice

A notice issued under this subsection shall state the specific grounds and include the factual basis for the summary suspension, limitation, or prohibition and state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

(c) Effective Date

A summary suspension, limitation, or prohibition shall be effective upon service of the notice under paragraph (b).

9513. Initiation of Non-Summary Proceeding**(a) Notice**

Nasdaq staff may initiate a proceeding authorized under Rule 9511(a)(2)(A) or (B), by issuing a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

(b) Effective Date

For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice.

Selected NASD Notices to Members; 99-16.

9514. Hearing and Decision**(a) Request****(1) Request by Member, Associated Person, or Other Person**

A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a hearing with Nasdaq. The request shall state the specific grounds for setting aside the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513, or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with Nasdaq pursuant to Rules 9135, 9136, and 9137.

(2) Failure to File Request

If the member, associated person, or other person subject to the notice

issued under Rule 2210, 2220, 9512(a), or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall constitute final action by Nasdaq .

(3) Ex Parte Communications

The prohibition against ex parte communications in Rule 9143 shall become effective under the Rule 9510 Series when Nasdaq staff has knowledge that a member, associated person, or other person intends to request a hearing under this paragraph.

(b) Designation of Party for Nasdaq and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of Nasdaq shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.

(c) Stays

(1) Summary Proceeding

Unless the Nasdaq Board orders otherwise, a request for a hearing shall not stay the effectiveness of a summary suspension, limitation, or prohibition under Rule 9512.

(2) Non-Summary Proceeding

Unless the Nasdaq Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, or 9513, except that a request for a hearing shall not stay a notice of a limitation or prohibition on services offered by Nasdaq or a member thereof with respect to services to which a member, associated person, or other person does not have access.

(d) Time of Hearing

(1) Summary Proceeding

If a member, associated person, or other person who is subject to a notice issued under Rule 9512(a) files a written request for a hearing, a hearing shall be

held within seven days after the filing of the request for hearing. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight commercial courier.

(2) Non-Summary Proceeding

If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 21 days after the filing of the request for hearing. The Hearing Panel may, during the initial 21 day period, extend the time in which the hearing shall be held by an additional 21 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight commercial courier.

(e) Transmission of Documents

(1) Not less than five days before the hearing, Nasdaq shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight commercial courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by Nasdaq until the date upon which the Nasdaq serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(2) Not less than five days before the hearing, the Parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight commercial courier.

(f) Hearing Panel Consideration

(1) Rights of Parties

The Parties shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(2) Witnesses

A person who is subject to the jurisdiction of Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter.

(3) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The member, associated person, or other person may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(4) Record

The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by Nasdaq under Rule 9514(e)(1); (3) the request for hearing; (4) any other submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

(5) Custodian of the Record

The Office of the General Counsel of Nasdaq shall be the custodian of the record.

(6) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(g) Decision of the Hearing Panel**(1) Summary Proceeding**

Based on its review of the record, the Hearing Panel shall affirm, modify, or reverse the summary suspension, limitation, or prohibition. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).

(2) Non-Summary Proceeding

Based on its review of the record, the Hearing Panel shall decide whether a cancellation, suspension, bar, limitation, prohibition, or pre-use filing requirement shall be imposed or continue to be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).

(3) Contents of Decision

The decision shall include:

(A) a statement setting forth the specific statute, rule, or NASD by-law that authorized the proceeding;

(B) a statement describing the investigative or other origin of the proceeding;

(C) the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513;

(D) a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;

(E) a statement in support of the disposition of the principal issues raised in the proceedings; and

(F) if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition; or, if a non-summary suspension, cancellation, bar, limitation, prohibition or pre-use filing requirement is to be imposed or continue to be imposed, its effective date, time, and terms.

(4) Issuance of Decision After Expiration of Call for Review Period

The Hearing Panel shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the proceeding for review pursuant to Rule 9515. If the Nasdaq Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rule 9131. The decision shall be effective upon service and shall constitute the final action of Nasdaq.

Selected NASD Notices to Members; 99-16.

9515. Discretionary Review by the Nasdaq Board**(a) Call for Review by Director**

A Governor may call a proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed by paragraph (b).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Hearing Panel. By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten this period. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq Board may, during the period, vote to extend the period.

(c) Review at Next Meeting

If a Director calls a proceeding for review within the period prescribed by paragraph (b), the Nasdaq Board shall review the decision not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of the Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the Nasdaq Board may remand the proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements of Rule 9514(g)(3).

(e) Issuance of Decision

The Nasdaq Board shall issue and serve its written decision on the Parties pursuant to Rule 9131. The decision shall be effective upon service. The decision shall constitute the final action of Nasdaq, unless the Nasdaq Board remands the proceeding.

9516. Reinstatement

A member, associated person, or other person who has been suspended or limited by a final action of Nasdaq under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. The request shall be filed with the department or office of Nasdaq that acted as a Party in the proceeding. The head of the department or office shall serve its response on the member or person via facsimile or overnight commercial courier within five days after receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the Nasdaq Board. The Nasdaq Board shall respond to the request in writing within 14 days after receipt of the request. The Nasdaq Board shall serve its response by facsimile or overnight commercial courier.

9517. Copies of Notices and Decisions to Members

A copy of a notice initiating a proceeding, a notice of a hearing, or any other notice or decision that is served on a person associated with a member under the Rule 9510 Series shall be served simultaneously on such member by the same method of service provided for in the applicable rule.

9518. Application to Commission for Review

The right to have any action pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review by the Commission shall not stay the effectiveness of final action by Nasdaq, unless the Commission otherwise orders.

9519. Other Action Not Foreclosed; Costs

(a) Action by Nasdaq under the Rule 9510 Series shall not foreclose action by Nasdaq under any other Rule.

(b) Nasdaq may impose on a member, associated person, or other person such costs of a denial of access proceeding as Nasdaq deems fair and appropriate under the circumstances. Costs relating to other proceedings under the Rule 9510 Series may be imposed under Rule 8330.

9520. Eligibility Proceedings**9521. Purpose**

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the Nasdaq By-Laws and the Nasdaq Rules. Such actions hereinafter are referred to as "eligibility proceedings."

9522. Initiation of Eligibility Proceeding**(a) Initiation by Nasdaq****(1) Issuance of Notice of Disqualification or Ineligibility**

If Nasdaq staff has reason to believe that a statutory disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of Nasdaq, Nasdaq staff shall issue a written notice to the member or associated person. The notice shall specify the grounds for such disqualification or ineligibility.

(2) Notice to Member

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief pursuant to paragraph (c) with the Nasdaq Review Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the membership of the member shall be canceled, unless the Membership Department grants an extension for good cause shown.

(3) Notice to Associated Person

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that a member may apply for relief on behalf of itself and such person by filing a written application for relief pursuant to paragraph (c) with the Nasdaq Review Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the registration of the associated person shall be revoked, unless the Membership Department grants an extension for good cause shown.

(4) Service

A notice issued under this section shall be served by facsimile or pursuant to Rule 9131

(b) Obligation of Member to Initiate Proceeding

A member shall file a written application for relief from the eligibility requirements of Nasdaq pursuant to paragraph (c) with the Nasdaq Review Council if the member determines prior to receiving a notice under paragraph (a) that:

(1) the member is subject to a statutory disqualification or otherwise is no longer eligible for membership;

(2) a person associated with such member is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or

(3) the member wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

(c) Form of Application for Relief

A written application for relief shall be submitted on Form MC400 and shall include a detailed statement demonstrating why the requested relief should be granted.

(d) Withdrawal of Application

A member may withdraw its application for relief at any time by filing a written notice with the Nasdaq Review Council pursuant to Rules 9135, 9136, and 9137.

(e) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Nasdaq staff has initiated the eligibility proceeding and Nasdaq staff has knowledge that a member intends to file a written application for relief with the Nasdaq Review Council.

Selected NASD Notices to Members; 99-16.

9523. Nasdaq Review Council Consideration**(a) Hearing Panel Consideration****(1) Appointment of Hearing Panel**

If a member files an application for relief, the Nasdaq Review Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the Nasdaq Review Council or former Directors or Governors. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Notice of Hearing

Not less than fourteen days before the hearing, the member shall be notified via facsimile or commercial courier of the location, time, and date of the hearing.

(3) Transmission of Documents

(A) If Nasdaq staff initiated the eligibility proceeding by issuing a notice under Rule 9522(a), Nasdaq staff shall provide to the member and its current or prospective associated person all documents that were relied on in issuing the notice. Such documents shall be served on the member and its current or prospective associated person by facsimile or commercial courier not less than ten days before the hearing.

(B) Not less than ten days before the hearing, the Membership

Department, which shall act as a Party in the eligibility proceeding, and the member and its current or prospective associated person shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or commercial courier.

(4) Rights of Member, Current or Prospective Associated Person, and Membership Department

The member, its current or prospective associated person, and the Membership Department shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(5) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The member and the current or prospective associated person may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(6) Record

The record shall consist of:

- (A) the notice issued pursuant to Rule 9522(a), if applicable;
- (B) all documents relied upon in issuing the notice under Rule 9522(a), if applicable;
- (C) the application for relief filed pursuant to Rule 9522(b);
- (D) any other submissions by the member, the current or prospective associated person, and the Membership Department;
- (E) any evidence considered at the hearing; and
- (F) the transcript of the hearing and any corrections thereto.

(7) Custodian of the Record

The custodian of the record shall be the Office of General Counsel of Nasdaq.

(8) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(9) Recommendation

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the Nasdaq Review Council not later than seven days before the meeting of the Nasdaq Review Council at which the eligibility proceeding shall be considered.

(b) Decision**(1) Decision of the Nasdaq Review Council**

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the Nasdaq Review Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the member and its current or prospective associated person. Alternatively, the Nasdaq Review Council may remand the eligibility proceeding. The Nasdaq Review Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) a description of the origin of the eligibility proceeding and the nature of the disqualification;

(B) a description of the prospective business or employment requested to be engaged in; and

(C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the member and current or prospective associated person.

(3) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the eligibility proceeding for review pursuant to Rule 9524. If the Nasdaq Board does not call the eligibility proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the member, the current or prospective associated person, and Membership Department pursuant to Rule 9131. The decision shall be effective upon service. The decision shall constitute final action of Nasdaq, unless the Nasdaq Review Council remands the eligibility proceeding.

9524. Discretionary Review by the Nasdaq Board

(a) Call for Review by Director

A Director may call an eligibility proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the Nasdaq Board that is at least 15 days after the date on which the Nasdaq Board receives the proposed written decision of the Nasdaq Review Council. By a unanimous vote of the Nasdaq Board, the Nasdaq Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Nasdaq Board then in office, the Nasdaq Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review at Next Meeting

If a Director calls an eligibility proceeding for review within the period prescribed in paragraph (b), the Nasdaq Board shall review the eligibility proceeding not later than the next meeting of the Nasdaq Board. The Nasdaq Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. Alternatively, the Nasdaq Board may remand the eligibility proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9523(b)(2).

(e) Issuance of Decision

The Nasdaq Board shall issue and serve its written decision on the member, the current or prospective associated person, and Membership Department pursuant to Rule

9131. The decision shall be effective upon service. The decision shall constitute the final action of Nasdaq, unless the Nasdaq Board remands the proceeding.

9525. Expedited Review

(a) Direction by Executive Committee

Notwithstanding Rules 9523 and 9524, the Nasdaq Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the Nasdaq Board Executive Committee determines that expedited review is necessary for the protection of investors.

(b) Call for Review Period

If a recommended decision is subject to expedited review, a Director may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

(c) No Call for Review

If no Director calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the member, the current or prospective associated person, and Membership Department pursuant to Rule 9131. The decision shall be effective upon service and shall constitute final action of Nasdaq.

(d) Call for Review

If a Director calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the Nasdaq Board Executive Committee, except that the Director who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Director. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9524(d) and (e).

Selected NASD Notices to Members; 99-16.

9526. Application to Commission for Review

The right to have any action taken pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review

shall not stay the effectiveness of final action by Nasdaq, unless the Commission otherwise orders.

9530. Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges

9531. Notice

(a) Notice

Nasdaq staff may issue a written notice suspending or canceling the membership of a member or the registration of a person who has failed to pay a fee, due, assessment, other charge, or submit a required report or information related to such payment.

(b) Service of Notice

Nasdaq staff shall serve the notice by facsimile or overnight commercial courier and shall file a copy of the notice with the Office of Hearing Officers.

(c) Effective Date of Notice

A notice issued and served under this Rule shall become effective 15 days after the date of service of the notice.

Selected NASD Notices to Members; 99-16.

9532. Hearing

(a) Request for Hearing

Within five days after the date of service of a notice issued under Rule 9531, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.

(b) Hearing Procedures

(1) Appointment of Hearing Officer

If a hearing is requested, the Chief Hearing Officer shall appoint a Hearing Officer to conduct the hearing and decide whether the member or the person's registration should be suspended or canceled.

(2) Parties

The Parties shall be the member or person to whom the notice was issued

and the Nasdaq Treasurer.

(3) Time of Hearing

The hearing shall be held within 45 days after the date of service of the notice under Rule 9531. Not later than seven days before the hearing, the Hearing Officer shall serve the Parties with written notice of the date and time of the hearing.

(4) Transmission of Documents

Not later than seven days before the hearing, the Nasdaq Treasurer shall serve the member or person associated with a member via overnight commercial courier with all documents that were considered in connection with the decision to issue a notice under Rule 9531 and provide copies of the same to the Hearing Officer.

(5) Counsel

The Parties may be represented by counsel at a hearing conducted under this Rule.

(6) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the Parties shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the Hearing Officer.

(7) Witnesses

A person who is subject to Nasdaq's jurisdiction shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(8) Additional Information

At any time during its consideration, the Hearing Officer may direct the Parties to submit additional information. Any additional information submitted shall be provided promptly to all Parties at least one business day before the Hearing Officer renders his or her decision.

(9) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter.

A Party may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Officer within a reasonable time determined by the Hearing Officer. Upon notice to the participants in the hearing, the Hearing Officer may order corrections to the transcript as requested or sua sponte.

(10) Record

The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9531, the notice issued under Rule 9531, the request for hearing filed under Rule 9532, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Officer. The Office of Hearing Officers shall be the custodian of the record.

(11) Failure to Appear at Hearing

If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9531 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.

Selected NASD Notices to Members; 99-16.

9533. Decision

The Hearing Officer may suspend or cancel the membership of a member or the registration of a person for failure to pay a due, fee, assessment, other charge, or for failure to submit a required report or information related to such payment. The Hearing Officer shall prepare a proposed written decision, and if the Hearing Officer determines that a suspension or cancellation should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation, and in the case of a suspension, the conditions for terminating the suspension. The written decision served under this Rule shall become effective upon service and shall constitute final action of Nasdaq .

Selected NASD Notices to Members; 99-16.

9534. Notice to Membership

Nasdaq shall provide notice of a suspension or cancellation under this Rule Series and the grounds therefor in the next membership supplement.

Selected NASD Notices to Members; 99-16.

9535. Termination of Suspension

A suspended member or person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 9531 or, if applicable, the conditions of a decision under Rule 9533, with the Office of Hearing Officers. The Office of Hearing Officers shall respond to the request in writing within five days after receipt of the request. The Office of Hearing Officers shall send the written response via overnight commercial courier or facsimile.

Selected NASD Notices to Members; 99-16.

9536. Copies of Notices and Decisions to Member

A copy of a notice or decision under the Rule 9530 Series that is served on a person associated with a member shall be served on such member.

Selected NASD Notices to Members; 99-16.

9537. Other Action Not Foreclosed

Action by Nasdaq under the Rule 9530 Series shall not foreclose action by Nasdaq under any other Rule.

Selected NASD Notices to Members; 99-16.

9600. PROCEDURES FOR EXEMPTIONS**9610. Application****(a) Where to File**

A member seeking an exemption from Rule 1021, 1022, 1070, Interpretive Material 2110-1, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900 shall file a written application with the appropriate department or staff of Nasdaq and provide a copy of the application to the Office of General Counsel of Nasdaq.

(b) Content

An application filed pursuant to this Rule shall contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the Rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the application to be publicly available in whole or in part, the member also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

(c) Applicant

A member that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 9600 Series.

Selected NASD Notices to Members: 98-52, 99-16.

9620. Decision

After considering an application, Nasdaq staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rule 9131. After the decision is served on the Applicant, the application and decision shall be publicly available unless Nasdaq staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

9630. Appeal**(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Office of General Counsel of Nasdaq, with a copy of the notice also provided to the appropriate department or Nasdaq staff. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. The Nasdaq Review Council may order oral argument. If the Applicant does not want the Nasdaq Review Council's decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the Nasdaq Review Council shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the Nasdaq Review Council.

(d) Appointment of Subcommittee

Following the filing of a notice of appeal, the Nasdaq Review Council or Review Subcommittee may designate a Subcommittee to hear an oral argument, if ordered,

consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the Nasdaq Review Council a disposition of all matters on appeal.

(e) Decision

After considering all matters on appeal and the Subcommittee's recommendation, the Nasdaq Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Nasdaq Review Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rule 9131. The decision shall be effective upon service and shall constitute final action of Nasdaq .